



UTAH JUDICIAL CONDUCT COMMISSION ANNUAL REPORT FY 2003

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Creation and Authority of the Judicial Conduct Commission



Although it had existed previously as a legislatively created body, Utah's Judicial Conduct Commission (JCC) was constitutionally established in 1984. See Constitution of Utah, Article VIII, Section 13. The constitution authorizes the Legislature to statutorily establish the composition and procedures of the JCC, and those provisions are found in Utah Code, Title 78, Chapter 8.

The JCC is empowered to investigate and conduct confidential hearings regarding complaints against state, county and municipal judges throughout the state. The JCC may recommend the reprimand, censure, suspension, removal, or involuntary retirement of a judge for any of the following reasons:

- action which constitutes willful misconduct in office;
- final conviction of a crime punishable as a felony under state or federal law;
- willful and persistent failure to perform judicial duties;
- disability that seriously interferes with the performance of judicial duties; or
- conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

Prior to the implementation of any such JCC recommendation, the Utah Supreme Court must review the JCC's proceedings as to both law and fact. The Supreme Court then issues an order implementing, rejecting, or modifying the JCC's recommendation.

Confidentiality of JCC Records and Proceedings



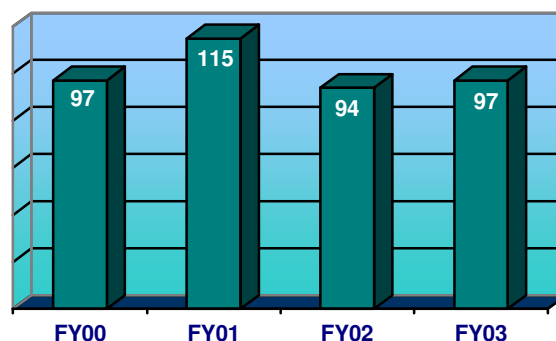
Except in certain limited circumstances specified by statute, all complaints, papers and testimony received or maintained by the JCC, and the record of any confidential hearings conducted by the JCC, are confidential, and cannot be disclosed.

Number of Complaints Received and Resolved



The JCC receives and investigates about 100 complaints each year. Of that total, approximately 80% are dismissed at the conclusion of the preliminary investigation, either because the basis of the complaint is an appealable issue beyond the JCC's jurisdiction, or because the preliminary investigation fails to produce sufficient facts upon which to warrant additional proceedings.

Complaints Received Per Year



Of the 97 complaints received in FY 2003, 76 have been dismissed to date, 19 are the subject of ongoing investigations, one resulted in the issuance of an informal order of reprimand, and one resulted in a recommendation for removal from office.

Complaints Received in FY 2003

Judge Type	Number of Judges	Number of Complaints Received	Number of Judges Named in Complaints
Appellate	12	0	0
District	70	65	38
Juvenile	25	8	5
Justice Court	120	21	17
Pro Tempore	165	3	3

Summary of Sanctions Implemented by the Utah Supreme Court in FY 2003



Formal Order of Reprimand. Washington County Justice Court Judge Richard M. Dobson's daughter had been placed on house arrest by another judge. Law enforcement officers observed Judge Dobson's daughter at a location which they believed to be in violation of the house arrest order, and detained her. The daughter's fiancé, who was also present, called Judge Dobson from the scene. Via cell phone, Judge Dobson inappropriately raised his voice and told the officers that he had "trusted the police and backed them 100 percent," but that he was "not so sure anymore." He also told the officers that he was "going whole hog on this one," and that he was going to "come after [them] with the full weight of the law." The following day, Judge Dobson publicly apologized to the officers. It was determined that Judge Dobson's actions violated Code of Judicial Conduct Canon 4A, which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the capacity to act impartially, and so that such activities do not demean the judicial office.

Informal Order of Reprimand. A small claims judge pro tempore maintained a private law practice in which he represented debtors in bankruptcy proceedings. The judge continued a small claims trial for a period of one month. During that month, the judge filed a bankruptcy proceeding on behalf of one of the defendants, then filed a Notice of Bankruptcy in the small claims case. It was determined that the judge's actions violated: Code of Judicial Conduct Canon 1, which requires judges to personally observe high standards of conduct so that the integrity and independence of the judiciary will be preserved; and Code of Judicial Conduct Canon 3E(1), which requires judges to enter disqualifications in proceedings in which their impartiality might reasonably be questioned.

Informal Order of Reprimand. A justice court judge witnessed a dog running at large. He instituted criminal proceedings against the dog's owner without an indictment, information or citation. When the defendant filed a motion seeking to disqualify the judge, the judge neither disqualified nor referred the request to another judge for a determination, in violation of the appropriate rule of procedure. It was determined that the judge's actions violated: Code of Judicial Conduct Canon 3B(2), which requires judges to apply the law; and Code of Judicial Conduct Canon 3E(1), which requires judges to enter disqualifications in proceedings in which their impartiality might reasonably be questioned.

Informal Order of Reprimand. A district judge engaged in personal communications, outside of the courtroom, with two women who had previously appeared before him. It was determined that the judge's actions violated: Code of Judicial Conduct Canon 2, which requires judges to avoid the appearance of impropriety in all activities; and Code of Judicial Conduct Canon 4A, which requires judges to conduct their extra-judicial activities so that they do not exploit the judicial position.

Informal Order of Reprimand. A justice court judge, using his government owned computer, accessed adult pornography sites on four different days during a two week period. Although the judge's activities were discovered within a few weeks, no report was made to the JCC for two and one-half years. During that time, the judge had not again used his government owned computer to access such sites. It was determined that the judge's actions violated Code of Judicial Conduct Canon 1, which requires judges to personally observe high standards of conduct so that the integrity and independence of the judiciary will be preserved.

Informal Order of Reprimand. A district judge was faced with an attorney who repeatedly objected to going forward in a criminal hearing. The judge told the attorney to stop wasting the court's time. When the attorney refused to proceed, the judge had him taken into custody. In chambers, the judge told the attorney that he had "had a gutful" of the attorney, that the attorney was being "a hard-head" and was "acting like an idiot," and that the attorney's "attitude suck[ed]." It was determined that the judge's actions violated Code of Judicial Conduct Canon 3B(4), which requires judges to be patient, dignified and courteous to persons who appear before them.

JCC Membership And Staff



JCC Members

Ruth Lybbert, Chair
Rep. Katherine Bryson
Rep. Neal Hendrickson
Hon. Russell Bench
Hon. Darwin Hansen
Joe Judd

Rod Orton, Vice-Chair
Sen. Gene Davis
Sen. Michael Waddoups
Gayle McKeachnie
Flora Ogan

Staff

Colin Winchester, Executive Director
Susan Hunt, Investigator
Charles Smalley, Contract Investigator
Jill Blasdel, Office Technician

Summary of Additional Sanctions Recommended by the Judicial Conduct Commission in FY 2003



Removal. Fourth District Judge Ray M. Harding, Jr., was criminally charged with felony counts of possession and/or use of heroin and cocaine. At the conclusion of a confidential hearing based on stipulated facts, the JCC determined that Judge Harding had violated Code of Judicial Conduct Canon 2A, which requires judges to respect and comply with the law, and recommended that Judge Harding be removed from office. Judge Harding resigned before the JCC could file its recommendation with the Supreme Court. The Supreme Court later dismissed the JCC's recommendation as moot, but permanently disqualified Judge Harding from serving in any judicial or quasi-judicial position in the state.

Formal Order of Reprimand. After a confidential hearing, the JCC determined that Third District Juvenile Judge Joseph W. Anderson had failed to hold adjudication hearings in a timely manner in 9 separate abuse, neglect and dependency cases, in violation of state law and despite a Court of Appeals opinion holding that the statutory time limits are mandatory. The JCC also determined that Judge Anderson had failed to rule on two cases taken under advisement within 60 days, as required by statute. The JCC concluded that Judge Anderson's actions violated Code of Judicial Conduct Canon 2A, which requires judges to respect and comply with the law, and recommended that Judge Anderson receive a formal order of reprimand. The Supreme Court appointed a special master to take additional evidence, and ordered that all subsequent proceedings in the matter would be open to the public. The special master's proceedings are not yet completed.

Legislative Changes During FY 2003



The 2003 Legislature approved three bills amending the statutes which govern the JCC:

- H.B. 119, providing that the Supreme Court may on its own motion remove a judge for specified reasons, providing that the Supreme Court may place a judge on administrative leave without pay if the judge has been criminally charged with a felony or a class A misdemeanor, and prohibiting the JCC from recommending an informal order of reprimand after a confidential hearing has been conducted;
- S.B. 29, granting the Office of the Legislative Auditor General access to JCC records for audit purposes; and

Legislative Changes During FY 2003 (cont)

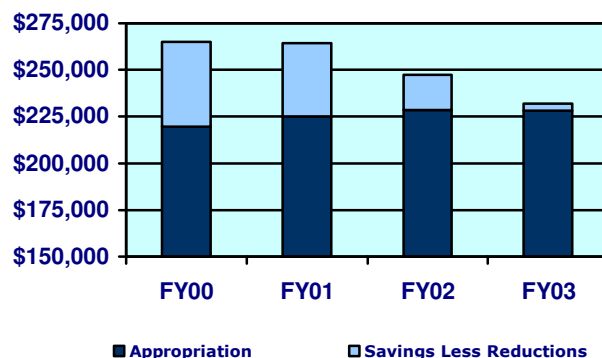


- S.B. 93, clarifying that justice court judges can be reported to the JCC for repeated or willful noncompliance with local rules and regulations related to personnel, budget and other administrative functions.

FY 2003 Budget



Most of the JCC's budget is appropriated annually by the Legislature. Additional funding comes from non-lapsing agency savings. For FY 2003, the legislative appropriation was \$228,200, and savings from the previous year totaled \$13,406. Budget reductions during FY 2003 totaled \$9,700, leaving available funds of approximately \$232,000. Of that amount, the JCC spent \$198,000, saving nearly \$34,000, most of which was attributable to one-time savings in employee salaries.



Of the \$198,000 spent in FY 2003, nearly 73% was expended for employees' salaries and benefits. Other expenditures are also shown below:

